



JOHN ELIAS BALDACCI  
GOVERNOR

STATE OF MAINE  
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES  
BOARD OF PESTICIDES CONTROL  
28 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0028

SETH H. BRADSTREET III  
COMMISSIONER  
HENRY S. JENNINGS  
DIRECTOR

**BOARD OF PESTICIDES CONTROL**

**November 16, 2007**

Colby Thomas Rooms, Hampton Inn  
425 Kennedy Memorial Drive, Waterville  
(Exit 127 from I-95)

**MINUTES**

**9:30 A.M.**

☒ Present: Jemison, Eckert, Walton, Qualey, Stevenson

1. Introductions of Board and Staff

☒ The Board, staff and Assistant Attorney General Randlett introduced themselves.

2. Public Hearing on Proposed Amendments to Chapters 10, 26, 29 and 41

The Board will hear testimony on a series of amendments to four different rule chapters. The proposed amendment to Chapter 10 clarifies that Plant Incorporated Protectants are considered pesticides from a regulatory standpoint. The proposed amendments to Chapter 26 exempt crack and crevice treatments from the notification requirements and modify the posting provisions. The proposed amendments to Chapter 29 codify temporary statutory restrictions affecting pesticide applications to control browntail moths near marine water and institute a 25-foot buffer to surface water for terrestrial broadcast applications. The amendments to Chapter 41 would implement sales and use standards for distributors and growers of Bt corn.

Additional details of the proposed amendments were described in the public hearing notice published in major newspapers on October 24, 2007. Copies of the proposed amendments are available upon request or may be viewed at the Board's website, [www.thinkfirstspraylast.org](http://www.thinkfirstspraylast.org).

Sign-up sheets for each chapter will be available at the door for persons wishing to testify. Written comments may be submitted to the Board's address above until 4:00 p.m. on November 30, 2007.

☒ Chair Eckert directed the public hearing to receive comment on proposed amendments to four chapters of the rules. Eleven people testified about proposed changes to Chapter 10,

no one testified about the proposed changes to Chapter 26, three people testified about the proposed changes to Chapter 29, and thirty-four people testified about the proposed changes to Chapter 41. A court recorder was present and she will produce a transcript of the hearing.

3. Minutes of the October 5, 2007, Board Meeting

Action Needed: Amend and/or Approve

Presentation By: Henry Jennings  
Director

☒ Walton/Stevenson: Moved and seconded approval of the minutes.

In Favor: Unanimous

4. Adoption of Board Policy on Acceptable Forms of Verifiable Authorization

At the February 16, 2007, meeting, the Board adopted an amendment to Chapter 20 of its rules that requires commercial applicators who provide ongoing, periodic treatments to enter into written contracts with their customers, or to use a system of verifiable authorization acceptable to the Board. The new provisions become effective on January 1, 2008.

The Board reviewed an initial set of ideas at its June 22, 2007, meeting. Suggestions were incorporated and a menu of options was reviewed at the October 7, 2007, meeting. Additional revisions have been incorporated, and the Board will now review a draft Board policy for possible adoption.

Presentation By: Henry Jennings  
Director

Action Needed: Approve/Amend the Policy

☒ Fish reviewed the history of the verifiable authorization policy, pointing out that the requirement for a contract or a system of verifiable authorization will go into effect beginning January 1, 2008. Fish stated the draft policy had been developed over the course of several Board Meetings and included additional suggestions from the last Board Meeting on October 5, 2007.

The draft policy outlines five methods of verifiable authorization, each of which is sufficient by itself, and then a set of three different measures which must be used in combination. Stevenson questioned why an automated phone call couldn't serve as a stand-alone method. After a short discussion, members agreed it would serve better as a complement to another method.

Fish then brought up an idea from Michael Legasse of Green Thumb Lawn Service. Legasse suggested the staff should be allowed to approve additional approaches on a case-by-case basis. The Board agreed that there may be additional approaches that are suitable. Accordingly, they directed the staff to add a sentence allowing the staff to approve additional methods.

Jemison/Walton: Moved and seconded approval of the policy as amended.

In Favor: Unanimous

5. Discussion of Board Policy on Accepting Electronic Comments Pertaining to Board Agenda Topics

In the days leading up to and following the July 27, 2007, Board meeting, the office was flooded with e-mails and articles about Bt corn and/or aerial spraying. Under the existing procedure for mailing information to Board members, most of these submissions were either given to members on the morning of the meeting, or they arrived during or after the meeting. This meant that there was not enough time to review a large percentage of the comments and/or articles prior to when these topics were discussed. As a result, the staff is proposing that the Board adopt a policy on submission of comments to ensure there is time to review comments before considering the topic at a Board meeting.

Presentation By: Paul Schlein  
Public Information Officer

Action Needed: Amend/Adopt the Policy on Submission of Comments

- ☒ Schlein pointed out the purpose of making changes to the Board's policy on accepting comments is to ensure that the Board has adequate time to review comments that are submitted. Under the current policy, and with the advent of electronic correspondence, the Board may be handed dozens of pages of information just prior to the start of a Board meeting, which does not allow adequate time for consideration of that information. Schlein stated the proposed amendments to the policy would set a deadline for comments of 8:00 a.m., three days prior to the Board meeting. The staff would then compile any comments and e-mail them to the Board or post them on the website. Any comments/information received after the cutoff would be held over until the next Board meeting.

Walton pointed out that the time frames outlined in Schlein's memo may need clarification, since as currently written, the memo suggests that comments will be accepted up until the Tuesday after the Board meeting. The intent of the memo was to accept comments until the Tuesday before the meeting.

Lauchlin Titus pointed out that he doesn't receive his copy of the Board agenda until a day or two prior to the Board meeting. He would prefer to receive an e-mail if it would

be received further in advance of the meeting. Schlein stated he could add Titus to a list of people he sends an e-mail to at the time the agendas are mailed.

Jemison/Walton: Moved and seconded approval of the policy on comments as amended.

In Favor: Unanimous

6. Review of Planning Session Discussion on Aerial Drift Concerns

At the July 27, 2007, Board meeting, members reviewed a report from their Stakeholders Committee on Pesticide Drift. Subsequently, the Board directed the staff to develop rulemaking concepts to address concerns voiced about notification, drift management plans and verification of the correct site. Staff ideas to address those concerns were reviewed at the September 7, 2007, Board meeting. At the October 5, 2007, Board meeting, members reviewed their own internal prioritization of ideas presented by the Stakeholders Committee. The Board directed the staff to abandon the draft rules under development in favor of a Public Information Gathering Meeting to be held in conjunction with the December Board meeting. There was also sentiment to continue discussion on the subject at the annual planning session. The Board will now review a staff memo summarizing those discussion points.

Presentation By:      Lebelle Hicks  
                                 Staff Toxicologist

Action Needed:        Provide Additional Direction to the Staff

- ☒ Hicks referred to her memo to the Board, dated November 5, 2007, that reflected the Board discussion of aerial issues from the annual planning session held on October 26, 2007. Attached to Hicks' memo was the Board's prioritization of the recommendations from the Stakeholders Committee. Board members agreed that Hicks' memo captured the planning session discussion.

Hicks reminded Board members that they had directed the staff to schedule a Public Information Gathering Meeting in conjunction with the December 14, 2007, Board meeting.

7. Review of the Board's Budget

At the annual planning session, the Board reviewed a staff memo summarizing the Board's current budget status together with some anticipated new expenses. The Board will now continue that review.

Presentation By:      Henry Jennings  
                                 Director

- ☑ Jennings referred members to his memo dated November 6, 2007, discussing the Board's budget status. He pointed out that the Board's dedicated account is carrying a cash balance currently, but several cost increases threaten to eat away at the cash balance in the near term. Jennings stated the greatest concern was the Department of Agriculture's initiative to implement a new overhead charge (referred to as Di-cap) against all non-general fund accounts, at a rate of 18.73%.

After a brief discussion, consensus was reached for the staff to work with the Chair to develop a letter for her signature to the Commissioner expressing the Board's concerns over the proposed Di-cap charge.

#### 8. Prioritization of Topics from the Board Planning Session

The Board held its annual planning session on October 26, 2007, where they reviewed hold-over topics from 2006 and discussed some new topics. The Board will review the entire list of topics that are not already in progress and prioritize them.

Presentation By: Henry Jennings  
Director

- ☑ Jennings directed the Board to a new list of discretionary tasks for them to prioritize and return to the staff to be compiled.

#### 9. Other Old or New Business

a. National Academy of Sciences Study on Bt Corn Effects on Caddisflies

- ☑ Hicks commented that the caddisfly study was not conducted by the National Academy of Sciences, but was published in, "The Proceedings of the National Academy of Sciences." She pointed out there were numerous additional studies assessing the impacts of PIPs on aquatic organisms.

Jemison commented that this is an important topic that the Board should keep abreast of. There was some discussion about commissioning an Environmental Risk Advisory Committee (ERAC) to study the issue, but the prevailing sentiment was it would be premature at this point. Hicks was directed to monitor the literature for further studies of this nature. Eckert suggested that Hicks do the ground work necessary to establish an ERAC should the need arise.

Russell Libby suggested that it would be useful to provide growers with information on the caddisfly concern. Hicks added that it could become part of any grower-training program. Lauchlin Titus offered that very few acres of Bt corn are likely to be planted in 2008 and that less than 400 acres of corn planted in Maine is grown for grain, the rest is grown for silage where the amount of the corn plants left in the field is minimal.

b. Other

10. Schedule and Location of Future Meetings

December 14, 2007, and January 25, 2008, are the tentative dates for the next Board Meetings. The Board will decide whether to change and/or add dates.

- ☒ Board members added tentative Board meetings dates of February 29, 2008, and March 28, 2008.

11. Adjourn

- ☒ Jemison/Stevenson: Moved and seconded that the meeting adjourn at 2:47 p.m.

In Favor: Unanimous